

REMARKS

The Applicants wish to thank Examiner Graffeo and Supervisory Patent Examiner Marschel for the courtesy extended to their undersigned representative during the Interview on July 10, 2007. The results of that Interview are repeated below.

Claim 12 has been canceled. This amendment should be entered as it merely cancels a claim. 37 C.F.R. §1.116(b)(1). No new matter is believed to be added by entry of the amendment. Claims 11 and 13-20 are pending and in condition for allowance.

Rejection Under 35 U.S.C. § 112

The Applicants acknowledge the rejection of claim 12 under 35 U.S.C. § 112, 1st paragraph. This rejection is obviated by amendment. Claim 12 has been canceled.

Rejection Under 35 U.S.C. § 103

The Applicants acknowledge the obviousness rejection of claims 11-20 over the Bianchi et al. article in view of U.S. 6,218,136 (the '136 patent). This rejection is kindly traversed. As discussed during the Interview, the '136 patent does not qualify as prior art against the present application.

For convenience, submitted herewith are copies of two relevant flow charts and one example from the M.P.E.P. As discussed during the interview, because the '136 patent claims priority to an International Application having an international filing date before November 29, 2000, neither the '136 patent nor its international equivalent, WO 94/34137, qualifies as prior art. The earliest date the '136 patent qualifies as prior art is September 10, 1998, which is well after the priority date of the present application, November 15, 1996. MPEP § 706.02(f)(1). The '136 patent cannot be used as a reference against the present application.

As was discussed during the Interview, the provisional filing date of the '136 patent has no effect at all on its availability as prior art. As noted in the attached Example 6 from

the M.P.E.P. under the heading "Additional *Benefit Claims", if an International Application, filed before November 29, 2000, claims priority to a U.S. provisional application, the earliest prior art date for the corresponding U.S. patent is still the date the requirements of 35 U.S.C. §371(c)(1),(2) and (4) were met, which, in the case of the '136 patent is too late to be prior art against the present application.

The rejection based on the '136 patent should be withdrawn, and this case should be passed to allowance.

Conclusion

This application is ready for allowance and issue, and an early indication of same is kindly requested. Should Examiner Graffeo have any questions regarding this application, or have any suggestions to place it into even better condition for allowance, he is kindly invited to telephone Applicants' undersigned representative at the number that follows.

Respectfully submitted,

LAW OFFICE OF JOHN K. PIKE, PLLC

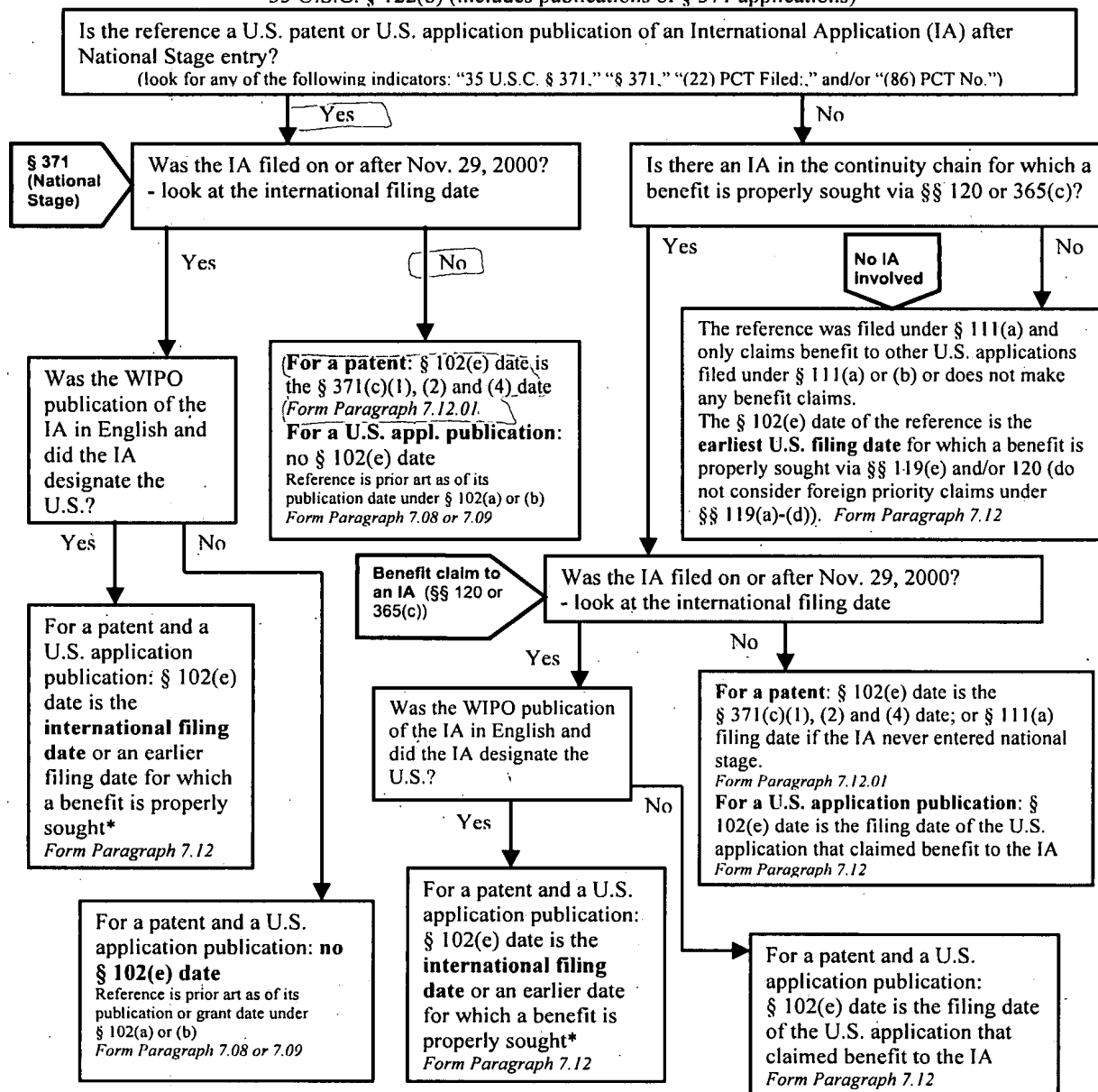
A handwritten signature in black ink, appearing to read "J. K. Pike", is written over a horizontal line.

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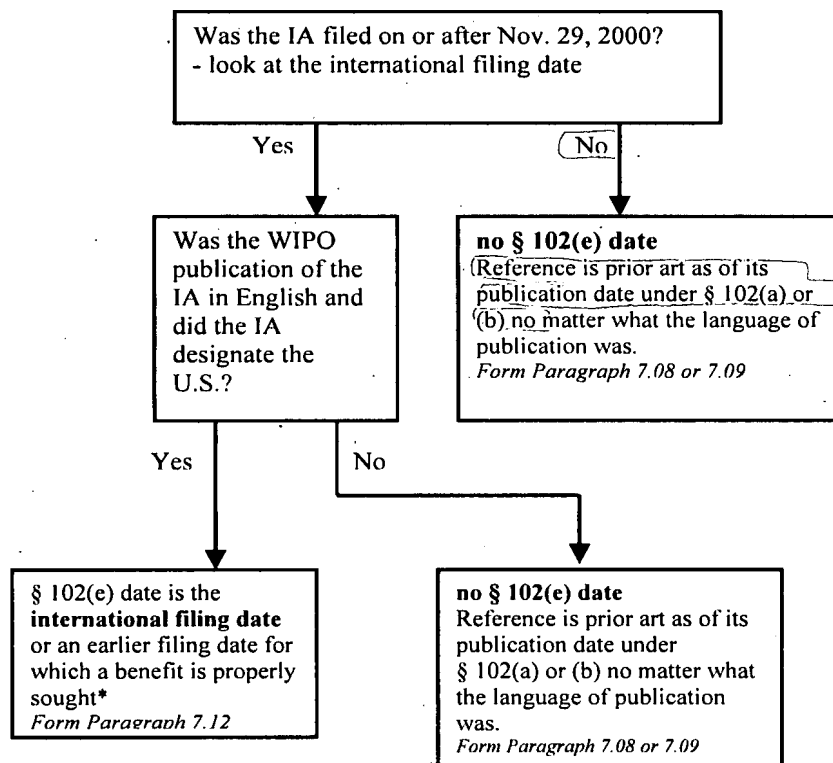
III. FLOWCHARTS

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FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:**Apply to all applications and patents, whenever filed****Chart 1: For U.S. patent or U.S. patent application publication under 35 U.S.C. § 122(b) (includes publications of § 371 applications)**

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

(FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
(Chart II: For WIPO publication of International Applications (IAs))



* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

Glossary of Terms:

U.S. patent application publication = pre-grant publication by the USPTO under 35 U.S.C. § 122(b)

International application (IA) = an application filed under the Patent Cooperation Treaty (PCT)

§ 371 application = an IA that has entered the national stage in the U.S. (35 U.S.C. § 371(c)(1), (2) and (4))

November 29, 2000 = the effective date for the amendments to §§ 102(e) and 374

WIPO = World Intellectual Property Organization

WIPO Publication = a publication of an IA under PCT Article 21(2) (e.g., Publication No. WO 99/12345)

§ 111(a) = provision of the patent code that states the **filing** requirements for **nonprovisional applications**

§ 111(b) = provision of the patent code that states the **filing** requirements for **provisional applications**

§ 119(e) = provision of the patent code that allows for **benefit claims to provisional applications**

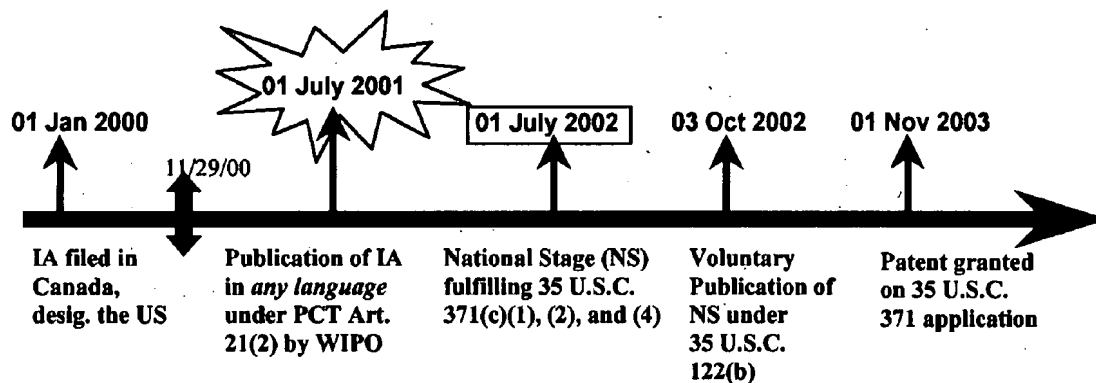
§ 119(a)-(d) = provision of the patent code that allows for **priority claims to foreign applications**

§ 120 = provision of the patent code that allows for **benefit claims to nonprovisional applications**

§ 365(c) = provision of the patent code that allows for **benefit claims to international applications**

Example 6: References based on the national stage (35 U.S.C. 371) of an International Application filed prior to November 29, 2000 (language of the publication under PCT Article 21(2) is not relevant).

The reference U.S. patent issued from an international application (IA) that was filed prior to November 29, 2000 has a 35 U.S.C. 102(e) prior art date of the date of fulfillment of the requirements of 35 U.S.C. 371(c)(1), (2) and (4). This is the pre-AIPA 35 U.S.C. 102(e). The application publications, both the WIPO publication and the U.S. publication, published from an international application that was filed prior to November 29, 2000, do not have any 35 U.S.C. 102(e) prior art date. According to the effective date provisions as amended by Pub. L. 107-273, the amendments to 35 U.S.C. 102(e) and 374 are not applicable to international applications having international filing dates prior to November 29, 2000. The application publications can be applied under 35 U.S.C. 102(a) or (b) as of their publication dates.



The 35 U.S.C. 102(e)(1) date for the IA Publication by WIPO is: None.

The 35 U.S.C. 102(e)(1) date for the Publication by USPTO is: None.

The 35 U.S.C. 102(e) date for the Patent is: 01 July 2002.

The IA publication by WIPO can be applied under 35 U.S.C. 102(a) or (b) as of its publication date (01 July 2001).

Additional *Benefit Claims:

If the IA properly claimed **>the benefit of< any earlier-filed U.S. application (whether provisional or non-provisional), there would still be no 35 U.S.C. 102(e)(1) date for the U.S. and WIPO application publications, (and the 35 U.S.C. 102(e) date for the patent will still be 01 July 2002 (the date of fulfillment of the requirements under 35 U.S.C. 371(c)(1), (2) and (4)).

If a later-filed U.S. nonprovisional (35 U.S.C. 111(a)) application claimed the benefit of the IA in the example above, the 35 U.S.C. 102(e)(1) date of the application publication of the later-filed U.S. application would be the actual filing date of the later-filed U.S. application, and the 35 U.S.C. 102(e) date of the patent of the later-filed U.S. application would be 01 July 2002 (the date that the earlier-filed IA fulfilled the requirements of 35 U.S.C. 371(c)(1), (2) and (4)).